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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,805	04/08/2002	Ravinder K. Jain	44838	1656
23529	7590	01/09/2007		
ADE & COMPANY INC. 2157 Henderson Highway WINNIPEG, MB R2G1P9 CANADA			EXAMINER MCELWAIN, ELIZABETH F	
			ART UNIT	PAPER NUMBER
			1638	
SHORTENED STATUTORY PERIOD OF RESPONSE.	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/09/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/926,805

Applicant(s)

JAIN ET AL.

Examiner

Elizabeth F. McElwain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 12, 17, 46 and 47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 12, 17, 46 and 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

The amendment filed October 18, 2006 has been entered.

Claims 1 and 17 are currently amended.

***Claim Rejections - 35 USC § 103***

1. Claims 1, 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishizawa, as stated in the last office action.
2. Claims 1-5, 12, 17 and 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishizawa, and further in view of Davies et al (U.S. Patent 5,563,058) and Bhella et al (Plant Physiol. 106:1713-1714,1994 in IDS), as stated in the last office action. In addition, Nishizawa teaches extraction of total lipids from the transgenic plant, wherein GPAT is expressed prior to harvesting, and it would have been obvious to extract the fatty acids from the seeds, which are the storage organ for fatty acids in plants, as stated above, and inherently would comprise triacylglycerides (columns 13-14).
3. Applicants' arguments filed October 18, 2006 have been fully considered but they are not persuasive. Applicants assert that the rejection should be withdrawn in view of the amendment of the claims to state that the organism has enhanced production of triglycerides after transformation and that the oil is extracted from the seeds. Applicants argue that Nishizawa teaches a decrease in the content of saturated phosphatidylglycerol and that Nishizawa states "no

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significant difference was observed between the control and the transgenic plants in the fatty acid composition of major lipid classes other than PG.” Applicants also point out that Nishizawa extracted lipids from leaves and not seeds in the examples provided.

The Examiner maintains that Applicants’ claims recite the same method steps as those taught in the prior art, and that while Nishizawa did not identify an increase in triacylglycerides in the leaves of the plants, it appears that by using the same methods the increase in triglycerides would be inherent in the seeds, and it would have been obvious to extract lipids from the seeds. Furthermore, the evidence for non-obviousness should be commensurate with the scope of the claims. Applicants may be able to overcome the rejection by including a step for selection of seeds having increased levels of triacylglycerides. However, it is unclear whether the specification provides support for such an amendment.

### ***Conclusion***

No claims are allowed.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

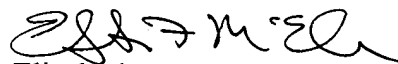
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (571) 272-0802. The examiner can normally be reached on increased flex time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Elizabeth F. McElwain, Ph.D.  
Primary Examiner  
Art Unit 1638

EFM